

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YAN YAN,	:	
	:	
Plaintiff,	:	Case No. 4:10-CV-00212
	:	
v.	:	
	:	Judge James F. McCLURE, Jr.
PENN STATE UNIVERSITY, ZHI-	:	
CHUN LAI, and LI-LUN HO,	:	Complaint filed: 1/26/2010
	:	
Defendants.	:	<i>Electronically Filed</i>

**DEFENDANTS' MOTION FOR PARTIAL DISMISSAL OF PLAINTIFF'S**  
**COMPLAINT**

Defendants, The Pennsylvania State University ("Penn State" or "University"), Zhi-Chun Lai ("Dr. Lai") and Li-Lun Ho ("Dr. Ho"), request that the Court enter an order partially dismissing Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). In support of their motion, Defendants aver as follows.

1. Plaintiff initiated this suit with the filing of a Complaint on or about January 26, 2010.

2. Plaintiff personally served all defendants on or about March 8, 2010.

3. Defendants file this motion seeking to dismiss the majority of Plaintiff's claims.

4. In Count I of the Complaint, Plaintiff alleges violation of Title IX, 20 U.S.C. § 1681(a), against Penn State, and Dr. Ho as an individual.

5. Count I fails as a matter of law to state a claim against Penn State and should be dismissed. In addition, established precedent precludes a Title IX claim against an individual defendant. Thus, Count I should also be dismissed as to Dr. Ho.

5. In Count II of the Complaint, Plaintiff alleges that Penn State violated her rights under the Rehabilitation Act, 29 U.S.C. § 704.<sup>1</sup>

6. Count II should be dismissed in its entirety because it fails as a matter of law to state a claim.

7. In Count III of the Complaint, Plaintiff alleges that all defendants violated 42 U.S.C. § 1983 by retaliating against her for exercising rights protected by the First Amendment, U.S. CONST. amend. XIV, § 1.

8. As to Penn State, Count III of the Complaint should be dismissed for failure to state a claim.

9. In Count IV of the Complaint, Plaintiff alleges that Defendants violated 42 U.S.C. § 1983 and her rights under the Equal Protection Clause, U.S.

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<sup>1</sup> Based on Plaintiff's Complaint, Defendants believe that Plaintiff intended to assert a claim under § 504 rather than § 704 of the Rehabilitation Act. Section 504 provides for claims against recipients of federal funding and is codified at 29 U.S.C. § 794.

CONST. amend. XIV, § 1, by discriminating and retaliating against her based on her gender and national origin, and by “arbitrary and capricious” action.

10. Count IV fails to state a claim under the Equal Protection Clause and § 1983 against Defendants and should be dismissed in its entirety.

11. In Count V of the Complaint, Plaintiff alleges violation of her rights under the Equal Protection Clause, U.S. CONST. amend. XIV, § 1, and claims discrimination based on her national origin and race. Count V is apparently brought against Dr. Ho and Penn State.

12. Count V is redundant and fails to state a claim as a matter of law. Accordingly, Count V should be dismissed in its entirety.

WHEREFORE, Defendants respectfully request that this Court enter an Order dismissing Plaintiff's Complaint as to Count I in its entirety; Count II in its entirety; Count III as to Penn State; Count IV in its entirety; and Count V in its entirety. Defendants will timely file a Brief in Support of this Motion to Dismiss pursuant to Rule 7.5 of the Local Rules of the United States District Court for the Middle District of Pennsylvania.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

Dated: March 29, 2010

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendants' Motion for Partial Dismissal of Plaintiff's Complaint in the above-captioned matter was served this 29<sup>th</sup> day of March, 2010, to the attorneys/parties of record via electronically filing as follows:

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